IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cri. Appeal No. 22 of 2007

Reserved on : 8th August, 2007

Date of Decision: 27th August, 2007

Narinder Kumar		Appellant
	Versus	
State of H.P.		Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the appellant: Mr.Rakesh Jaswal, Advocate.

For the respondent: Mr.C.B.Singh, Dy. Advocate General.

Sanjay Karol, J.

This appeal is directed against the judgment dated 7th December, 2006 passed by Sessions Judge, Solan, HP, whereby the appellant has been convicted for an offence under Section 376, Indian Penal Code (hereinafter referred to IPC) and sentenced to undergo imprisonment for a term of 5 years, keeping in view his physical condition and also to pay a fine of Rs.10,000/- and in default thereof to undergo simple imprisonment for a further period of six months.

In view of the ratio of law laid down by the apex Court in *Om Parkash vs. State of U.P.,* reported in (2006) 9 SCC 787, the name of prosecutrix is described as victim and the appellant-accused is hereinafter referred to as accused in the judgment.

The case of the prosecution as borne out from the record is as under:-

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

The victim, aged 14 years was studying in 6th class in Govt. Middle School, Kotla. The accused employed as a teacher (Vidya Upasak), in the primary section of the said school called the victim and other students of her class to attend to extra classes in the school on Sunday i.e. 5th February, 2006. In all 7 students including the victim and Kumari Krishma (PW-2) attended the school on that date. Even though the accused was not teaching the said class, however, on the pretext of taking extra classes, the said students were called on Sunday. There are three rooms in the school and no other employee, except the accused came to the school. The rooms were opened by the accused as he had the keys of the same. On the said date, the students were taught in the class room of the school by the accused. After teaching the students for some time, he gave certain problems to the students, which were required to be solved by them. The accused left for the office room by directing the students to come one by one to show their note books. The victim was called first and the other students were asked to go to another room and come after some time. The moment the victim entered the office room, the accused caught hold of her, laid her on the floor and after opening the string of her Salwar committed rape on her. The victim cried for once and in the meantime PW-2 came and saw the accused committing the offence and came out and left the place. At that time the accused got up, paid Rs.5/- to the victim and threatened that in case she disclosed the incident to any person, she would be killed. The victim came out of the room after few moments and on being asked narrated the entire incident to PW-2, who was waiting for her. Out of fear of threat of life, the victim did not disclose the incident to any one.

However, on the next day i.e. 6.2.2006, PW-2 narrated the incident to her teacher Meera Kumari (PW-5) and on 8.2.2006 telephonically informed the grand mother of the victim Smt. Kala Wati (PW-3). On being asked, the victim also narrated the entire incident to her grand mother (PW-3). On 9.2.2006 the accused called the victim and her grand-mother, who visited him alongwith her far off relation Devinder Kumar (PW-3) when the accused begged pardon and stated that whatever was to happen has happened and there was no benefit in pursuing the matter.

On 10.2.2006 FIR No.21 of 2006 under Sections 376, 506 IPC was registered at Police Station Darlaghat at the instance of Smt. Kala Wati (PW-3). During the course of investigation, clothes of victim were taken into possession by the police vide memo (Ex.PW-1/A) in presence of Devinder Kumar (PW-4) and Sham Lal (PW-7). The victim was got medically examined by Dr.Seema Rani Sood (PW-10), Medical Officer, Primary Health Centre, Darlaghat.

The accused was also got medically examined by Dr.Sant Ram (PW-9), who found the accused capable of performing sexual intercourse in terms of his MLC (Ext.PW-9/B). His clothes of other parts of his body were also taken into possession for medical examination and were sealed in parcels and the report of the Chemical Examiner was obtained. The photographs Ex.P4 and Ext.P6 were also taken during the course of investigation.

The accused was challaned and after complying with the provisions of Section 207, Cr.P.C was charged under Section 376 and 506, IPC. The accused did not plead guilty and was put on trial.

In all, statements of 14 prosecution witnesses were recorded by the trial Court. The statement of the accused under Section

313, Cr.P.C. was also recorded but no evidence was led by him in his defence.

After considering the entire material, the Court below held the accused guilty of offence under Section 376, IPC and convicted and sentenced him accordingly, however, acquitted of offence under Section 506, IPC.

The Court below has based the conviction primarily on the statements of victim, her class mate and eye witness Krisma (PW-2), grand mother of the victim Smt. Kala Wati (PW-3), Devinder Kumar (PW-4), Smt.Meena Kaushal (PW-5), Head Teacher, Govt. Middle School, Kotla, Dr.Sant Lal (PW-9) and Dr.Seema Rani (PW-10).

The trial Court has also noticed the defence of the accused that he was falsely implicated and conspiracy has been hatched to falsely implicate him. The witnesses have falsely deposed against him as the complainant party wanted to make a road through his land to which he refused and there was also a dispute with regard to water supply. .

During the course of hearing, learned counsel for the appellant has assailed the judgment of the trial Court on the following grounds:-

(1) The prosecution version stands falsified by the medical evidence on record. In the absence of any medical evidence with regard to the commission of offence there cannot be any conviction in law.

(2) There is delay in lodging of FIR, which is fatal to the prosecution case.

(3) Deposition of PW-2 is unreliable and her testimony cannot be relied upon to corroborate the statement of the victim for the reason that from photograph (Ext.PW-5/A)

and site plan (Ext.PW-14/A), it is clear that the view from the door is obstructed and that the exact place of commission of crime could not have been seen by her.

(4) There are major improvements on vital points in the statements of the prosecution witnesses.

(5) The material witness, namely, the sister of the victim, who could have thrown light and narrated the exact and correct events has been deliberately withheld by the prosecution.

(6) The accused is a victim of conspiracy and he has been falsely implicated due to animosity between him and the complainant party on the issue of construction of road and water supply.

Before I deal with the points raised by the learned counsel, I would be first and foremost examine the statements of material witnesses.

The victim unambiguously and unequivocally has stated that she, aged 14 years is a student of Class VI in the school. The accused had called the students to attend extra classes to be held on Sunday i.e. 5.2.2007. The accused is a teacher in the primary section of the school. Seven students came to attend the school and on that day accused took the class of Mathematics in one of the rooms. After some time, he gave some problems to solve and asked the students to come one by one to the office room and show the note-books to him. The victim was first one to be called and other students were sent out of the room. The moment she entered the office room, the accused caught hold of her and laid her on the floor after opening the string of her Salwar and fly of his pant committed the offence of rape. She cried once when in the meantime PW-2 came at the door and on seeing the act being performed left the place and the accused also got up. At that

time, she was threatened that if she would disclose the incident to any one, he would kill her. He also gave Rs.5/-. After putting on her Salwar, she came out of the room where she met PW-2 and on her asking she narrated the incident. Due to the threats meted out to her, she did not disclose the incident even to her parents. On 8.2.2006 the incident was narrated by PW-2 to her grand-mother (PW-3) on telephone, who in turn inquired from her when she disclosed the incident to her. On 9.2.2006 the accused had called the victim and grand-mother to his house, who after admitting his mistake begged for pardon. On 10.2.2006 the complaint was lodged by her grand-mother (PW-3) and during the course of investigation she was medically examined and her clothes, which were washed were taken by the police. In her cross-examination even though she has admitted that the accused never took extra classes prior to the date of incident, however, she has explained that keys of the school were with the accused, who not only opened the rooms (3 in number) of the school but had also taught the students, who were present at that time. The accused in fact had given problems to the students and had asked them to bring their note books for checking. She has admitted that there was blood on her Salwar and floor. She, however, has admitted that her family was trying to make a road through the land of the accused, which was objected to by him. In my view, her statement is unimpeachable and is totally reliable. The veracity of her statement has not been shattered in the cross-examination and in fact her version has been quite consistent.

PW-2 has supported the version of the victim all throughout. She has stated that she wanted to go to toilet with the victim and after waiting for 7-8 mts., she had gone towards the office room. She has corroborated the statement of the victim to the hilt.

According to her when she reached the door of the room, she saw the accused committing the crime and having seen them she came out and after some time when the victim came out of the room the entire incident was narrated to her. She narrated the incident to her teacher Smt. Meera Kaushal (PW-5) and also to grand mother (PW-3) of the victim on telephone. Her statement is totally reliable and in her cross examination there is nothing impeachable about the same.

Smt.Kala Wati (PW-3) grand mother of the victim, has confirmed the statement of (PW-2), who is stated to have informed her telephonically. She has also confirmed the narration of events by the victim to her. As per her deposition the incident was brought to the notice of Devinder Kumar (PW-4) Member of the Panchayat and on the asking of the accused they had visited the house of the accused, who had told them that there is no benefit in pursuing the matter. Importantly, there is no cross-examination of this witness on any of the material points.

Importantly, from the perusal of the above statements of these three witnesses, it is clear that the accused has not cross-examined the witnesses nor has put any suggestion to them, on the point that he had not called the students for taking extra class on Sunday. There is no cross-examination whatsoever on the point that he did not take any class or no student attended the school on Sunday or that he did not ask the students to come to the office room one by one or that the incident was not narrated to any person by the victim or that he had not called the victim and Smt. Kala Wati (PW-3) to his house and begged for pardon.

Devinder Kumar (PW-5) has supported the version of Smt. Kala Wati (PW-3) apart from deposing that the incident was also narrated to him by the victim. According to him, the accused had told

him and Smt. Kala Wati (PW-3) that whatever was to happen has happened. He has denied the suggestion that there is any litigation with the accused.

Smt. Meera Kaushal (PW-5) has confirmed the statement of PW-2.. She has not been cross-examined on vital points and importantly her version remains unrebutted.

Dr.Sant Lal (PW-9) has given his opinion (Ext.PW-9/B) and has stated that there was nothing to suggest that the accused was not capable of performing sexual intercourse.

Dr.Seema Rani (PW10) has given his opinion Ext.PW-10/B and for the decision of the present case it is important to reproduce her entire deposition as under:-

"On examination, I found as under:-

1. No external mark of injury seen on any part of the body. No blood stains/seminal stains were seen on the body/clothes. As told by the patient that she has not taken bath but changed her clothes since 5.2.2006. Clothes of the patient are not torn.
2. On Local Examination. No external mark of injury seen in the perennial region. No seminal/blood stains seen on P/V examination. There is a whitish discharge present. Tear present on the hymen on the enferoleater area of the hymen. No bleeding present at the time of examination. Surrounding structures appear normal. No swelling/ tenderness present on separating the labia majora. About 2 cm of finger could be inserted into the vagina. Slight tenderness/resistance felt while doing the P/V examination.
3. Vaginal smears made, sealed and handed over to the police to be sent for Chemical Analysis.
4. Pubic Hair of the patient were taken, sealed and handed over to the police to be sent for chemical analysis.

In my opinion penetration has been done but sexual intercourse has not been done. However, the final opinion will be given after report of Chemical Analysis is received.

In my revised opinion Penetration of the vulva of the patient has been done as per the report of the Chemical Analysis there are no seminal stains in the vaginal swab of the patient neither in the clothes/ pubic hair of the patient. Hence, in my opinion penetration of the vulva of the patient has been done without emission of the semen. I issued M.L.C. Ex.PW-10/B, which bears my signatures and in my handwritings. I cannot say whether in this case sexual intercourse has taken place or not as penetration can be done with anything. If there is penetration with hard object other than the male organ there would be injury but if the person is habitual of inserting such object injury may not be there but it will be when it is done for the first time. In our medical science emission of semen will constitute sexual intercourse.

xxxxx By Shri R.K.Sharma, Advocate, for accused xxx

The whitish discharge could be due to vaginal infection, urinary infection. It is correct that if there is a forceful sexual intercourse or penetration there would be tenderness or swelling of the vagina. The tear in the hymen in my opinion has old one as there was no tenderness no bleeding and no swelling. The breast and axillary hair were developed."

(Emphasis supplied)

The fact that the accused was working in the school has been admitted by him in his statement recorded under Section 313, Cr.P.C.

The first contention that in the absence of any supportive medical evidence of commission of offence there can be no conviction in my view, is totally untenable in law.

In Modi's Medical Jurisprudence & Toxicology, 22nd Edn., Chapter XVIII, covering sexual offences, it is thus written:-

> "Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without emission of semen, or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is to the effect whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."

In *State of Rajasthan (supra)*, the Apex Court held as under:-

> "9. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified on reversing the conviction of the respondent and recording the order of acquittal. It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to

irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals sentence recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women. In *Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat* [(1983) 3 SCC 217], this Court observed that refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a result, is adding insult to injury. This Court deprecated viewing evidence of such victim with the aid of spectacles fitted with lenses tinted with doubt, disbelief or suspicion. We need only remind ourselves of what this Court has said through one of us (Dr.A.S.Anand, J. as his Lordship then was) in *State of Punjab vs. Gurmeet Singh*, [(1996) 2 SCC 384 at p. 403, para 21]:

"(A) rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which

> are not of a fatal nature, to throw out an otherwise reliable prosecution case”.”

In *State of Rajasthan vs. N.K. the accused,* reported in (2000) 5 SCC 30, the Court has held that the absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix.

In the present case, the victim was just 14 years and the accused was able bodied young youth aged approximately 21 years. The trust with which a young child had visited her teacher was totally shattered by his conduct.

In *Om Parkash* (supra), it has been held that even if doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix.

In *Ranjit Hazarika vs. State of Assam,* reported in (1998)8 SCC 635, the Court has held that non rupture of hymen and absence of injury on the victim’s private parts does not belie her testimony even if in the opinion of the doctor no rape has taken place that in itself would not be a ground sufficient enough to otherwise throw out a cogent and trustworthy evidence of the victim.

In *State of Punjab vs Gurmit Singh, reported in* AIR 1996 Supreme Court 1393, the Supreme Court on raising the query “why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?

has answered it that the Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.

In *State of H.P. vs Shree Kant Shekari,* reported in (2004)8 SCC 153 the Apex Court held that the testimony of a prosecutrix can be acted without corroboration in material particulars. However, if the Court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice. {Also see *State of H P vs Lekh Raj and another,* (2000)1 Supreme Court Cases 247}.

In the present case contrary to the submission of the learned counsel for the appellant, Dr.Seema Rani Sood (PW-10) has categorically stated that in her opinion penetration has been done but sexual intercourse has not taken place. She has explained that in medical science the emission of semen will constitute sexual intercourse and in her opinion the penetration of the vulva of the patient has been done without emission of the semen. Therefore, from the medical opinion Ex.PW-9/A and Ext.PW-10/B and the statements of Doctors (PW-9) and (PW-10), it cannot be held that medical evidence falsifies the case of the prosecution, which, according to me on the contrary fully supports and proves the prosecution case.

The victim has deposed about the commission of offence and has also stated that she had seen PW-2 come at the door and after

seeing them had left the place and the accused also got up. PW-2, PW-3, PW-4 and PW-5 have in one voice stated the narration of the incident either by the victim or PW-2. PW-2 has stated that she witnessed the accused committing the offence and she turned back. The fact that no sexual intercourse, in medical parlance, took place is acceptable in view of short duration of the entire incident. Therefore, it is clear that essential ingredient to constitute offence under Section 375, IPC is made out and it is medically proved that the victim had been raped.

The second contention is the delay in lodging the FIR. Sequence are as follows. On 5.2.2006 the act of crime is committed. On 6.2.2006 PW-2 narrated the incident to Smt. Meera Kaushal(PW-5), informed the sister of the victim on 7.2.2006. On 8.2.2006 PW-2 telephonically informed the grand mother (PW-3) of the incident who in turn verified the same from the victim and also informed Devinder Kumar (PW-4). On 9.2.2006 the accused called the victim and PW-3 and on his asking visited his house alongwith Devinder Kumar (PW-4), where he not only admitted his guilt and sought pardon but asked the matter to be dropped as nothing would materialize. On 10.2.2006, the FIR was got registered and the machinery of law set into motion.

In my view, there is no delay in lodging of FIR. In the present case, it has come on record that there was threat of life meted out by the accused to the victim. Obviously, the victim who was just a child of 14 years and a student of Class-VI was traumatized because of the incident. The victim and her relations were also called by the accused. Action was taken immediately when the fact was ascertained by the elder members of the family. The incident has taken place in rural area where people are not open to initiation of machinery of law

by putting the honour of the family at stake. No doubt, FIR was not lodged on 5th itself, but that delay has also been properly explained. Otherwise also, the delay in such cases generally takes place as initially the family members of the victim are hesitant in reporting the matter to the police as it brings disrepute not only to the victim, but also to the whole family which is ever lasting as rape is not a physical assault but it is oftenly destructive of the whole personality of the victim. The rapist degrades the very soul of the helpless female, therefore, in such circumstances delay in lodging FIR does occur. Moreover, there is nothing on record to assume that delay has been with a view to falsely implicate the accused or make improvements and concoctions, as such the delay in this case is not fatal to the case.

In *Dilbar Singh vs. State of Punjab*, reported in (2006) 10 SCC 531, the Apex court has held as under:-

> "This Court has observed in several decisions that the courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. A girl in a tradition-bound non-permissive society would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing anyone about the incident in the circumstances cannot detract from her reliability. In normal course of human conduct an unmarried girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she

> may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory."

The third point is that photograph (Ext.PW-5/A) and site plan (Ext.PW-14/A) belie the version of PW-2 as she could not have witnessed the commission of offence due to obstruction of view. From site plan Ext.PW-14/A, it is clear that site of occurrence of crime is visible from the door and from the photograph (Ext.PW-5/A), it cannot be said that nothing can be seen inside. That apart, the statement of PW-2 is clear, that she had witnessed the crime being committed. She has stated "when I reached the door of the room, I saw that accused had opened the Salwar of victim and fly of his pant and was committing wrong act with her. I do not know whether accused saw me or not <u>but I then came out</u>." (Emphasis supplied). It has come on record that at that time the door was open. It is thus evident that she had walked into the room may be upto the door, she saw everything and then came out. Further, in any case, corroboration may be required if the Court finds it difficult to place implicit relation on the version of the prosecution.

Learned counsel has further argued that there are major improvements in the statements of the witnesses on the vital points. The witnesses were not confronted with the statements made under Section 161, Cr.P.C. FIR was duly got exhibited and contents whereof

were duly proved, which are not in variance with the deposition of the witnesses. This fact is undisputed by the learned counsel. There is no contradictions in the statements of the witnesses and improvements minor though are not of such nature as would cast any doubt in the case of the prosecution with regard to the guilt of the accused.

Learned counsel for the appellant has argued that statement of victim has exaggerated inasmuch as no blood was found on the clothes or at the site of incident. The victim has already stated that the clothes had been washed at the time when the police took them. It has come on record that there was no other employee in the school on that day and the keys were with the accused, who opened the class rooms.. The possibility of the accused washing the blood after the incident cannot be ruled out. In any event, the doctor has opined that there has been penetration, which is sufficient enough to hold the accused guilty and convict him of the offence of rape.

As far as discrepancies are concerned, the court is required to examine the broader probabilities of the case and not to be swayed by minor discrepancies in the statement of the victim which are not of fatal nature. The testimony of the victim is required to be appreciated in the background of the entire case.

The next submission is with regard to holding of material witness. In my view, non-examination of the sister of the victim would not have make any difference as probable explanation has been given by the witnesses. Revelation of the offence by the teacher to the sister of the victim is not a missing link which is vital in the chain of events leading to the connection of the appellant. Sister is not stated to have witnessed the commission of offence or person to whom victim or PW-2 is stated to have narrated the incident. Smt. Kala Wati (Pw-5)

has stated that she had informed the sister of the victim of the incident. Whatever could have been stated by the sister has already come in the statement of PW-2, grand mother PW-3 and Smt. Meera Kaushal (PW-5). Therefore, this contention of the learned counsel is unacceptable.

The last submission that of false implication due to animosity. There is nothing on record to indicate except for the suggestion put to the victim. Importantly Devinder Kumar (Pw-4) with whom animosity is alleged has not been cross-examined on this point at all. The opportunity was given to the accused to lead evidence, which he did not avail. A suggestion has been put to the victim that there is some litigation pending inter se between the parties also stands denied. The contention is unacceptable. The case of the prosecution stands proved to the hilt.

The cross-examination of the witnesses has not brought out anything significant which may prove the version of the prosecution to be false and concocted or that they have deposed falsey or that the accused has been falsely implicated on account of animosity. No sane person would go to the extent of falsely implicating a person of charge of rape having far reaching consequences on the victim as well as on the family on the trivial issue of construction of road.

In *Hirji Bhai vs. State of Gujrat, AIR 1983 SC 753,* the Hon'ble Apex Court has held that the evidence of the victim of sex offence is entitled to great weight. Absence of corroboration notwithstanding for the following reasons:

> "1. A girl or woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on his chastity had ever occurred;

2. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours;

3. She would have to brave the whole world;

4. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered;

5. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family;

6. It would almost inevitably and almost invariably result in mental torture and suffering to herself;

7. The fear of being taunted by others will always haunt her;

8. She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo;

9. The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy;

10. The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour;

11. The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence; and

12. The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit and the risk of being disbelieved.

In the present case as well as would be seen, the victim has levelled such allegation which would have devastating affect on herself and also on her family, therefore, it is very unlikely that she

would have come forward with a false version on account of the enmity of others with the accused from which she would have not gained anything. Even if, the family members had some enmity, they would have also refrained from going to this extent as they could be trusted to know that in the Indian society her own future chances of getting married and settling down of such a woman in a respectable or acceptable family would be greatly marred if any such story calling into question her chastity were to gain circulation in the society and no girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against the accused who is a teacher in the same school where the victim is studying as such act would have caused more harm to her than to the accused unless it has actually taken place. The fact of the accused having called the victim and other students for extra class on Sunday cannot be said to be an act which was highly improbable as the innocent students would have never realized the ill intention of the accused behind holding of the class on a holiday.

On the critical examination of the above evidence, in my considered opinion the cross-examination conducted by the appellant and also the examination of the defence witnesses could not cause any dent to the case of the prosecution. In the aforesaid facts and circumstances, the statement of the victim itself inspires confidence and there is enough corroboration of her statement lent by the other witnesses.

Therefore, taking the overall view of the evidence of the prosecution as brought on record, it is reliable, trustworthy and inspires confidence and I have no hesitation in accepting it and coming to the conclusion that the accused has committed rape on the victim who was a minor at that time being under the age of 16 years.

For the foregoing reasons, the appeal is dismissed

27th August, 2007
(C)

(Sanjay Karol)
Judge